

OPINION

This is an appeal from the trial court's denial of habeas corpus relief. In November of 1982, the Defendant, Ronald L. Davis, was convicted of aiding and abetting second degree murder, and the trial court sentenced him to ninety-nine years incarceration. This Court affirmed his conviction on direct appeal, and the Tennessee Supreme Court denied permission to appeal.¹ The Defendant subsequently filed a petition for post-conviction relief, which was denied by the trial court. This Court affirmed the trial court's denial of post-conviction relief.² A second petition for post-conviction relief was later filed, and this Court affirmed the trial court's denial of relief in that action.³

On November 17, 1998, some sixteen years after his conviction, the Defendant filed a petition for writ of habeas corpus, which forms the basis for this appeal. In his petition, the Defendant alleged that his sentence is void because the trial court failed to sentence him under the 1982 Criminal Sentencing Reform Act. See Tenn. Code Ann. § 40-35-103 to -504 (repealed 1989). In his petition and brief, he also cites the 1989 Criminal Sentencing Reform Act. See Tenn. Code Ann. § 40-35-101 to -504. The trial court ruled that the Defendant was properly sentenced under prior sentencing law and concluded,

it is not arbitrary, unreasonable or otherwise in violation of the petitioner's constitutional rights for the legislature to alter the manner of computing the sentence for a criminal offense and provide that all sentences for offenses committed prior to the effective date of legislation be determined in accordance with the old law, i.e. the law in effect at the time the offense was committed.

The Defendant now appeals the trial court's dismissal of his petition for writ of

¹ See State v. Davis, 1984 Tenn. Crim. App. LEXIS 2951 (Tenn. Crim. App. Sept. 11, 1984).

² See Davis v. State, C.C.A. No. 85-251-III, 1986 WL 5469 (Tenn. Crim. App., Nashville, May 13, 1986).

³ See Davis v. State, C.C.A. No. 89-77-III, 1989 WL 71039 (Tenn. Crim. App., Nashville, June 29, 1989).

habeas corpus.

The crime for which the Defendant was convicted occurred prior to July 1, 1982. The Defendant was tried, convicted, and sentenced in November of 1982. The Defendant contends that because the Criminal Sentencing Reform Act of 1982 took effect on July 1, 1982, the trial court should have utilized the 1982 Act to sentence him. He argues that under the 1982 Act, he would have received a lesser sentence than that designated by prior law.

We conclude that the Defendant's petition does not properly allege grounds upon which habeas corpus relief may be granted. The remedy of habeas corpus is very limited in our state. The writ will issue only when a convicting court was without jurisdiction or authority to sentence a defendant or when a defendant's term of imprisonment has expired. Taylor v. Morgan, 909 S.W.2d 17, 19 (Tenn. Crim. App. 1995). The writ reaches jurisdictional error only, or in other words, void, not voidable, judgments. Archer v. State, 851 S.W.2d 157, 163-64 (Tenn. 1993). "A void judgment is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment or because the defendant's sentence has expired." Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). The petitioner in a habeas corpus proceeding bears the burden of showing by a preponderance of the evidence that the conviction is void or that the prison term has expired. Passarella v. State, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994).

In contrast to a habeas corpus proceeding, a second procedural avenue available for challenge of a conviction or sentence which has become final is a post-conviction proceeding. A petition for post-conviction relief is the appropriate means for the attack of a voidable judgment. Taylor, 995 S.W.2d at 83. A voidable conviction or sentence is defined as "one which is facially valid and requires the introduction of proof beyond the face of the record or judgment to

establish its invalidity.” Id. However, a post-conviction petition must be brought in a timely manner, or it is barred by the applicable statute of limitations. See Tenn. Code Ann. § 40-30-202.

Here, the Defendant has demonstrated neither that his conviction is void nor that his sentence has expired. We therefore conclude that the Defendant has demonstrated no right to habeas corpus relief. Even if we were to accept the Defendant’s argument as correct and assume that he was inappropriately sentenced under pre-1982 law, we must reach the same conclusion: The Defendant is not entitled to habeas corpus relief on the basis of his petition.

The judgment of the trial court is accordingly affirmed.

DAVID H. WELLES, JUDGE

CONCUR:

JOHN H. PEAY, JUDGE

JOHN EVERETT WILLIAMS, JUDGE